

Union Calendar No. 261

97TH CONGRESS
2D SESSION

H. R. 5366

[Report No. 97-433]

To amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 1982

Ms. FERRARO (for herself, Mr. DANIELSON, Mr. SOLARZ, Mr. HOYER, Ms. OAKAR, Mr. WOLF, Mr. CLAY, Mr. LELAND, Mrs. SCHROEDER, Mr. SCHUMER, and Mr. GARCIA) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

FEBRUARY 22, 1982

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Insert the part printed in italic]

A BILL

To amend title 5, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Federal Employees Flexi-
- 4 ble and Compressed Work Schedules Act of 1982".

1 SEC. 2. Chapter 61 of title 5, United States Code, relat-
2 ing to hours of work, is amended by inserting "SUB-
3 CHAPTER I—GENERAL PROVISIONS" before section
4 6101, and by inserting after section 6106 the following new
5 subchapter:

6 "SUBCHAPTER II—FLEXIBLE AND COMPRESSED
7 WORK SCHEDULES

8 "§ 6121. Definitions

9 "For purposes of this subchapter—

10 "(1) 'agency' means an Executive agency and a
11 military department;

12 "(2) 'employee' has the meaning given it by sec-
13 tion 2105 of this title;

14 "(3) 'basic work requirement' means the number
15 of hours, excluding overtime hours, which an employee
16 is required to work or is required to account for by
17 leave or otherwise;

18 "(4) 'credit hours' means any hours, within a
19 flexible schedule established under section 6122 of this
20 title, which are in excess of an employee's basic work
21 requirement and which the employee elects to work so
22 as to vary the length of a workweek or a workday;

23 "(5) 'compressed schedule' means—

1 “(A) in the case of a full-time employee, an
2 80-hour biweekly basic work requirement which is
3 scheduled for less than 10 workdays, and

4 “(B) in the case of a part-time employee, a
5 biweekly basic work requirement of less than 80
6 hours which is scheduled for less than 10 work-
7 days;

8 “(6) ‘overtime hours’, when used with respect to
9 flexible schedule programs under sections 6122 through
10 6126 of this title, means all hours in excess of 8 hours
11 in a day or 40 hours in a week which are officially or-
12 dered in advance, but does not include credit hours;
13 and

14 “(7) ‘overtime hours’, when used with respect to
15 compressed schedule programs under sections 6127
16 and 6128 of this title, means any hours in excess of
17 those specified hours which constitute the compressed
18 schedule.

19 **“§ 6122. Flexible schedules; agencies authorized to use**

20 “(a) Notwithstanding section 6101 of this title, each
21 agency may establish, in accordance with this subchapter,
22 programs which allow the use of flexible schedules which in-
23 clude—

1 “(1) designated hours and days during which an
2 employee on such a schedule must be present for work;
3 and

4 “(2) designated hours during which an employee
5 on such a schedule may elect the time of such
6 employee's arrival at and departure from work, solely
7 for such purpose or, if and to the extent permitted, for
8 the purpose of accumulating credit hours to reduce the
9 length of the workweek or another workday.

10 An election by an employee referred to in paragraph (2) shall
11 be subject to limitations generally prescribed to ensure that
12 the duties and requirements of the employee's position are
13 fulfilled.

14 “(b) Notwithstanding any other provision of this sub-
15 chapter, but subject to the terms of any written agreement
16 under section 6130(a) of this title—

17 “(1) any program under subsection (a) of this sec-
18 tion may be terminated by the Office of Personnel
19 Management if it determines that the program is not in
20 the best interest of the public, the Government, or the
21 employees; or

22 “(2) if the head of an agency determines that any
23 organization within the agency which is participating
24 in a program under subsection (a) is being substantially
25 disrupted in carrying out its functions or is incurring

1 additional costs because of such participation, such
2 agency head may—

3 “(A) restrict the employees’ choice of arrival
4 and departure time,

5 “(B) restrict the use of credit hours, or

6 “(C) exclude from such program any employ-
7 ee or group of employees.

8 **“§ 6123. Flexible schedules; computation of premium pay**

9 “(a) For purposes of determining compensation for over-
10 time hours in the case of an employee participating in a pro-
11 gram under section 6122 of this title—

12 “(1) the head of an agency may, on request of the
13 employee, grant the employee compensatory time off in
14 lieu of payment for such overtime hours, whether or
15 not irregular or occasional in nature and notwithstand-
16 ing the provisions of sections 5542(a), 5543(a)(1),
17 5544(a), and 5550 of this title, section 4107(e)(5) of
18 title 38, section 7 of the Fair Labor Standards Act, as
19 amended, or any other provision of law; or

20 “(2) the employee shall be compensated for such
21 overtime hours in accordance with such provisions, as
22 applicable.

23 “(b) Notwithstanding the provisions of law referred to in
24 paragraph (1) of subsection (a), an employee shall not be enti-
25 tled to be compensated for credit hours worked except to the

1 extent authorized under section 6126 of this title or to the
2 extent such employee is allowed to have such hours taken
3 into account with respect to the employee's basic work re-
4 quirement.

5 “(c)(1) Notwithstanding section 5545(a) of this title, pre-
6 mium pay for nightwork will not be paid to an employee
7 otherwise subject to such section solely because the employee
8 elects to work credit hours, or elects a time of arrival or
9 departure, at a time of day for which such premium pay is
10 otherwise authorized; except that—

11 “(A) if an employee is on a flexible schedule
12 under which—

13 “(i) the number of hours during which such
14 employee must be present for work, plus

15 “(ii) the number of hours during which such
16 employee may elect to work credit hours or elect
17 the time of arrival at and departure from work,
18 which occur outside of the night work hours designated
19 in or under such section 5545(a) total less than 8
20 hours, such premium pay shall be paid for those hours
21 which, when combined with such total, do not exceed
22 8 hours, and

23 “(B) if an employee is on a flexible schedule
24 under which the hours that such employee must be
25 present for work include any hours designated in or

1 under such section 5545(a), such premium pay shall be
2 paid for such hours so designated.

3 “(2) Notwithstanding section 5343(f) of this title, and
4 section 4107(e)(2) of title 38, night differential will not be
5 paid to any employee otherwise subject to either of such sec-
6 tions solely because such employee elects to work credit
7 hours, or elects a time of arrival or departure, at a time of
8 day for which night differential is otherwise authorized;
9 except that such differential shall be paid to an employee on
10 a flexible schedule under this subchapter—

11 “(A) in the case of an employee subject to such
12 section 5343(f), for which all or a majority of the hours
13 of such schedule for any day fall between the hours
14 specified in such section, or

15 “(B) in the case of an employee subject to such
16 section 4107(e)(2), for which 4 hours of such schedule
17 fall between the hours specified in such section.

18 **“§ 6124. Flexible schedules; holidays**

19 “Notwithstanding sections 6103 and 6104 of this title,
20 if any employee on a flexible schedule under section 6122 of
21 this title is relieved or prevented from working on a day des-
22 ignated as a holiday by Federal statute or Executive order,
23 such employee is entitled to pay with respect to that day for
24 8 hours (or, in the case of a part-time employee, an appropri-
25 ate portion of the employee's biweekly basic work require-

1 ment as determined under regulations prescribed by the
2 Office of Personnel Management).

3 **"§ 6125. Flexible schedules; time-recording devices**

4 "Notwithstanding section 6106 of this title, the Office of
5 Personnel Management or an agency may use recording
6 clocks as part of programs under section 6122 of this title.

7 **"§ 6126. Flexible schedules; credit hours; accumulation
8 and compensation**

9 "(a) Subject to any limitation prescribed by the Office of
10 Personnel Management or the agency, a full-time employee
11 on a flexible schedule can accumulate not more than 10
12 credit hours, and a part-time employee can accumulate not
13 more than one-eighth of the hours in such employee's bi-
14 weekly basic work requirement, for carryover from a biweek-
15 ly pay period to a succeeding biweekly pay period for credit
16 to the basic work requirement for such period.

17 "(b) Any employee who is on a flexible schedule pro-
18 gram under section 6122 of this title and who is no longer
19 subject to such a program shall be paid at such employee's
20 then current rate of basic pay for—

21 "(1) in the case of a full-time employee, not more
22 than 10 credit hours accumulated by such employee, or

23 "(2) in the case of a part-time employee, the
24 number of credit hours (not in excess of one-eighth of

1 the hours in such employee's biweekly basic work re-
2 quirement) accumulated by such employee.

3 **"§ 6127. Compressed schedules; agencies authorized to use**

4 "(a) Notwithstanding section 6101 of this title, each
5 agency may establish programs which use a 4-day workweek
6 or other compressed schedule.

7 "(b)(1) An employee in a unit with respect to which an
8 organization of Government employees has not been accord-
9 ed exclusive recognition shall not be required to participate in
10 any program under subsection (a) unless a majority of the
11 employees in such unit who, but for this paragraph, would be
12 included in such program have voted to be so included.

13 "(2) Upon written request to any agency by an employ-
14 ee, the agency, if it determines that participation in a pro-
15 gram under subsection (a) would impose a personal hardship
16 on such employee, shall—

17 "(A) except such employee from such program; or

18 "(B) reassign such employee to the first position
19 within the agency—

20 "(i) which becomes vacant after such deter-
21 mination,

22 "(ii) which is not included within such pro-
23 gram,

24 "(iii) for which such employee is qualified,
25 and

1 “(iv) which is acceptable to the employee.

2 A determination by an agency under this paragraph shall be
3 made not later than 10 days after the day on which a written
4 request for such determination is received by the agency.

5 “(c) Notwithstanding any other provision of this sub-
6 chapter, but subject to the terms of any written agreement
7 under section 6130(a) of this title, any program under subsec-
8 tion (a) may be terminated by the Office of Personnel Man-
9 agement, or the agency, if it determines that the program is
10 not in the best interest of the public, the Government, or the
11 employees.

12 **“§ 6128. Compressed schedules; computation of premium**
13 **pay**

14 “(a) The provisions of sections 5542(a), 5544(a), and
15 5550(2) of this title, section 4107(e)(5) of title 38, section 7
16 of the Fair Labor Standards Act, as amended, or any other
17 law, which relate to premium pay for overtime work, shall
18 not apply to the hours which constitute a compressed sched-
19 ule.

20 “(b) In the case of any full-time employee, hours worked
21 in excess of the compressed schedule shall be overtime hours
22 and shall be paid for as provided by whichever statutory pro-
23 visions referred to in subsection (a) are applicable to the em-
24 ployee. In the case of any part-time employee on a com-
25 pressed schedule, overtime pay shall begin to be paid after

1 the same number of hours of work after which a full-time
2 employee on a similar schedule would begin to receive over-
3 time pay.

4 “(c) Notwithstanding section 5544(a), 5546(a), or
5 5550(1) of this title, or any other applicable provision of law,
6 in the case of any full-time employee on a compressed sched-
7 ule who performs work (other than overtime work) on a tour
8 of duty for any workday a part of which is performed on a
9 Sunday, such employee is entitled to pay for work performed
10 during the entire tour of duty at the rate of such employee’s
11 basic pay, plus premium pay at a rate equal to 25 percent of
12 such basic pay rate.

13 “(d) Notwithstanding section 5546(b) of this title, an
14 employee on a compressed schedule who performs work on a
15 holiday designated by Federal statute or Executive order is
16 entitled to pay at the rate of such employee’s basic pay, plus
17 premium pay at a rate equal to such basic pay rate, for such
18 work which is not in excess of the basic work requirement of
19 such employee for such day. For hours worked on such a
20 holiday in excess of the basic work requirement for such day,
21 the employee is entitled to premium pay in accordance with
22 the provisions of section 5542(a) or 5544(a) of this title, as
23 applicable, or the provisions of section 7 of the Fair Labor
24 Standards Act, as amended, whichever provisions are more
25 beneficial to the employee.

1 **"§ 6129. Administration of leave and retirement provisions**

2 "For purposes of administering sections 6303(a), 6304,
3 6307 (a) and (c), 6323, 6326, and 8339(m) of this title, in the
4 case of an employee who is in any program under this sub-
5 chapter, references to a day or workday (or to multiples or
6 parts thereof) contained in such sections shall be considered
7 to be references to 8 hours (or to the respective multiples or
8 parts thereof).

9 **"§ 6130. Application of programs in the case of negotiated**
10 **contracts**

11 "(a) Employees within a unit with respect to which an
12 organization of Government employees has been accorded
13 exclusive recognition shall not be included within any pro-
14 gram under this subchapter except to the extent expressly
15 provided under a written agreement between the agency and
16 such organization.

17 "(b) An agency may not participate in a flexible or com-
18 pressed schedule program under a negotiated contract which
19 contains premium pay provisions which are inconsistent with
20 the provisions of section 6123 or 6128 of this title, as appli-
21 cable.

22 **"§ 6131. Prohibition of coercion**

23 "(a) An employee may not directly or indirectly intimi-
24 date, threaten, or coerce, or attempt to intimidate, threaten,
25 or coerce, any other employee for the purpose of interfering
26 with—

1 “(1) such employee’s rights under section 6122
2 through 6126 of this title to elect a time of arrival or
3 departure, to work or not to work credit hours, or to
4 request or not to request compensatory time off in lieu
5 of payment for overtime hours; or

6 “(2) such employee’s right under section
7 6127(b)(1) of this title to vote whether or not to be in-
8 cluded within a compressed schedule program or such
9 employee’s right to request an agency determination
10 under section 6127(b)(2) of this title.

11 “(b) For the purpose of subsection (a), the term ‘intimi-
12 date, threaten, or coerce’ includes, but is not limited to,
13 promising to confer or conferring any benefit (such as ap-
14 pointment, promotion, or compensation), or effecting or
15 threatening to effect any reprisal (such as deprivation of ap-
16 pointment, promotion, or compensation).

17 **“§ 6132. Regulations; technical assistance; program review**

18 “(a) The Office of Personnel Management shall pre-
19 scribe regulations necessary for the administration of the pro-
20 grams established under this subchapter.

21 “(b)(1) The Office shall provide educational material,
22 and technical aids and assistance, for use by an agency in
23 connection with establishing and maintaining programs under
24 this subchapter.

1 “(2) In order to provide the most effective materials,
 2 aids, and assistance under paragraph (1), the Office shall con-
 3 duct periodic reviews of programs established by agencies
 4 under this subchapter particularly insofar as such programs
 5 may affect—

6 “(1) the efficiency of Government operations;

7 “(2) mass transit facilities and traffic;

8 “(3) levels of energy consumption;

9 “(4) service to the public;

10 “(5) increased opportunities for full-time and part-
 11 time employment; and

12 “(6) employees’ job satisfaction and nonworklife.”.

13 SEC. 3. The chapter analysis for chapter 61 of title 5,
 14 United States Code, is amended by inserting “SUB-
 15 CHAPTER I—GENERAL PROVISIONS” immediately
 16 below the chapter heading, and by inserting the following
 17 items at the end of such analysis:

“SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULE

“6121. Definitions.

“6122. Flexible schedules; agencies authorized to use.

“6123. Flexible schedules; computation of premium pay.

“6124. Flexible schedules; holidays.

“6125. Flexible schedules; time-recording devices.

“6126. Flexible schedules; credit hours.

“6127. Compressed schedules; agencies authorized to use.

“6128. Compressed schedules; computation of premium pay.

“6129. Administration of leave and retirement provisions.

“6130. Application of programs in the case of negotiated contracts.

“6131. Prohibition of coercion.

“6132. Regulations; technical assistance; program review.”.

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